

Exhibit KK

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**LAERTHA BANKS and ARIA LAMBERT,
Each Individually and on Behalf of all
Others Similarly Situated**

PLAINTIFFS

v.

No. 4:21-cv-429-DPM

**CENTENE MANAGEMENT COMPANY,
LLC and CENTENE CORPORATION**

DEFENDANTS

ORDER

Banks and Lambert worked for Centene. They claim the company improperly excluded various bonuses from their regular rate of pay when calculating overtime pay. They sought conditional certification of a collective, but the Court denied that request. Two other workers — Dickerson and King-Macon — consented to join the proposed collective. The parties' motion papers treat them as plaintiffs; and the Court directs the Clerk to add Dickerson and King-Macon as named plaintiffs.

Based on the undisputed material facts, *Doc. 27*, and the governing law, Centene's motion for summary judgment is granted. As a matter of policy, the annual bonuses were discretionary based on the company's performance and the each employee's performance. *Doc. 31-1*. There were criteria, so the discretion was channeled, but eligibility and criteria do not change the basic uncertainty surrounding these bonuses. They were not automatic. Centene's policy was borne

out in practice: these four workers' annual bonuses varied from zero to \$2,233.44. *Doc. 37 at 2-4*. The company therefore complied with the applicable regulation by excluding the annual bonuses from the employees' regular rates. 29 C.F.R. § 778.211. Centene prevails as to the referral bonuses and key contributor awards, too. Pursuant to long-standing Department of Labor guidance, because the networking was voluntary, done after hours, and didn't involve significant time, the referral bonus that Centene would pay to a current employee for encouraging someone to come work at the company was not included in the employee's regular rate. United States Department of Labor Wage and Hour Division, Opinion Letter Fair Labor Standards Act (FLSA), 2020 WL 1640073, at *2 (26 March 2020). Last, the \$15 gift certificate at a holiday, and the \$15 Amazon gift cards given to everyone, were gifts—items unrelated to performance, and therefore properly excluded. 29 U.S.C. § 207(e)(1); *Alminiana v. Lowe's Home Centers, LLC*, 2020 WL 5640511, at *2 (W.D.N.C. 22 September 2020).

Motion, *Doc. 26*, granted. Judgment for Centene will issue.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

22 September 2023